the casualty occurs so far from being an essential element, is important only, on the one hand in that it makes out a clearer case; on the other, in that the inference has been allowed in similar cases. In short, whether or not the principle is applicable is a question of fact for the court sitting as a jury to decide upon. Therefore, no hard and fast test can be laid down. It may be said, however, that if the evidence in a given case goes to show that in the nature of things the accident would not have occurred if the defendant had exercised proper care, the court, as in the principal case, is justified in permitting the jury to infer negligence from the fact of the accident viewed in the light of the surrounding circumstance. *Scott* v. *London Dock Co.*, 3 H. & C., 596 (1865). But if the evidence is conflicting and is as consistent with the hypothesis of due care as with that of negligence, the Court should not allow the inference to be drawn. *Millie* v. *Manhattan R'y Co.*, 5 Misc., 301 (N. Y., 1893).

Upon the question of liability the conclusion reached by the Appellate Division seems to be more expedient and to conform better with the present needs of society. For although an elevator operator is not technically a common carrier, yet the considerations of public policy which require extraordinary diligence of the latter, would seem to require a similar degree of diligence of the former. In each case the passenger's safety depends wholly upon the operator's vigilance; in each case the probability of a serious accident, unless extraordinary vigilance is exercised, is imminent. The objection that an elevator operator receives no compensation for the carriage is met by the fact that he receives adequate compensation, indirectly at least, from the rent paid by the tenants. In several jurisdictions the question has been decided in favor of the view here contended for. *Oberfelder* v. *Doran*, 41 N. W., 1094 (Neb., 1889); *Goodsell* v. *Taylor*, 42 N. W., 873 (Minn., 1889); *Treadwell* v. *Whittier*, 22 Pac., 266 (Cal., 1889); *Marker* v. *Mitchell*, 54 Fed. Rep., 637 (1893); *Kentucky Hotel Co.* v. *Camp*, 30 S. W., 1010 (Ky., 1895); *Southern B. & L. Association* v. *Lawson*, 97 Tenn., 367 (1896); *Ripland* v. *Hirchler*, 7 Pa. Super. Ct., 384 (1898). The recent case of *Springer* v. *Ford*, 59 N. E., 953 (Ill., 1901), extends the liability to the operator of a freight elevator.

BANKRUPTCY—EXEMPTIONS.—The Bankruptcy Act of 1898 does not disturb the law of the State as to a debtor's exemptions. Section 6. *In re Ogilvie*, 5 Am. B. R., 374 (South. Dist. Ga., 1901. The trustee, in succeeding to the bankrupt's property, does not take title to specific exempted property. Section 70*a*. *In re Hester*, 6437 Federal Cases (Dist. Ct. N. C., 1871), 46 N. Y., 36; *Schlitz* v. *Schatz*, 12,459 Federal Cases (Dist. Ct. Misc., 1870). But as to those articles from which a debtor is entitled to select exemptions, the trustee takes title subject to defeasance by the bankrupt's selection. Consequently the administration of exempt property does not fall within the jurisdiction of the bankruptcy court. *Woodruff* v. *Cheeves*, 5 Am. B. R., 296 (C. C. A. Ga., 1901); *In re Hatch*, 4

Am. B. R., 349 (South. Dist. Iowa, 1900); *In re Wells*, 5 Am. B. R., 308 (Dist. Court Ark.) Since exemption is a personal privilege of the bankrupt or, in some cases, of his family, failure to exercise this privilege throws the whole estate into the bankruptcy court for administration. *In re Mayer*, 15 Fed. R., 598 (Dist. Ct. Pa., 1883). *Woolfolk* v. *Murray*, 44 Ga., 133 (1870). When, however, the bankrupt has waived this privilege only as to certain of his creditors, he is in effect insisting on it as to the rest, and thereby giving a lawful preference to those for whom he has waived it. It is as though he had first reserved his exemptions as against all creditors, and then given claims against this property to certain creditors.

A recent case, *In re Follett*, 5 Am. B. R., 305 (Dist. Court Tenn., 1900), held that a debtor who had fraudulently transferred property could later take an exemption out of it, when it was returned to the trustee, on the ground that the trustee takes title by Section 70*a* (4) to all fraudulently conveyed property, and hence, the fraudulent transfer was a waiver of exemptions. The element of actual fraud was eliminated from the case by the higher court. *In re Follett*, 5 Am. B. R., 404 (C. C. A., 6th Circ., 1901). Even so the decisions seem to up hold exemptions so long as the rights of a third party have not intervened. *In re Boothroyd*, 1652 Fed. Cases (Dist. Ct. Mich., 1876). *Brackett* v. *Watkins*, 21 Wendell, 68 (N. Y., 1839). That the trustees' taking title is no bar in itself to the bankrupt's later claim to exemptions is shown by the fact that even after the adjudication, at any time before a discharge, the bankrupt may amend his schedules and insert exemptions. *In re Kean*, 7630 Fed. Cases (Dist. Ct. Va., 1873). Consequently, the single fact that property was once transferred by the bankrupt, but later comes to his trustee, especially when the bankrupt himself has caused its return, and succeeded in exculpating himself of all color of fraud, should not suffice to bar his right to exemptions out of the property, *In re Follett*, 5 Am. B. R., 404 (C. C. A., 6th Circ., 1901).

TRUSTS—CHARITABLE BEQUESTS IN NEW YORK.—The recent case of *Racine* v. *Gillet*, N. Y. Law Journal, March 30, 1901, raises the question how far the Laws of 1893 (Chap. 701) have restored the English doctrine of charitable trusts in this State. It was there held by a referee that a bequest, "For the poor of New York," created a charitable fund, to be administered by the Supreme Court for the benefit of the poor; that it was not void for indefiniteness of beneficiaries, and not within the rule against perpetuities. This decision follows *Allen* v. *Stevens*, 161 N. Y., 122 (1899) even to the extent of the *dictum* of PARKER, C. J., that charitable trusts form an exception to the rule against perpetuities (1 COLUMBIA LAW REVIEW, 225). It is in line with the English doctrine that a charitable trust shall not fail for indefiniteness of beneficiaries, and that where there is no *cestui que trust* to come into court, the Attorney-General is to take measures to have the trust enforced. *Attorney-General* v. *Gleg*, 1 Atk., 356 (1738); *Mog-*